

REMARKS

Claims 49-60 have been canceled and claims 61-67 have been added. Support for the new claims may be found throughout the specification and claims as originally filed. No new matter has been added.

In particular, support for claims 61-67 may be found, for example, at page 14, line 23 to page 17, line 19, page 20, lines 9-33, page 24, lines 4-12, page 26, lines 1-12, page 28, lines 8-11, page 29, line 23 to page 30, line 2, page 42, lines 17-24, etc.

Amendment of claims should in no way be construed as an acquiescence to any of the Examiner's rejections. The amendments to the claims are being made solely to expedite prosecution of the present application and do not, and are not intended to, narrow the claims in anyway. Applicants reserve the option to further prosecute the same or similar claims in the instant or in a subsequent patent application.

Claim Objections

Claims 49 and 57 were objected to as containing informalities. Claims 49 and 57 have been canceled which is believed to obviate the rejection.

Rejection of claims 57-59 under 35 U.S.C. § 102(e)

Claims 57-59 were rejected under 35 U.S.C. § 102(e) as being anticipated by Kunsch et al. (U.S. Patent No. 6,593,114). The Office Action states that Kunsch et al. discloses a polynucleotide comprising SEQ ID NO: 772 and that “[n]ucleotides 24-704 of SEQ ID NO: 772 correspond[] to nucleotides 1-652 of instant SEQ ID NO: 1.” The Action further states that “SEQ ID NO: 772 would encode amino acids 1-190 and 192-209, or 1-30, 32-90, and 192-209 of SEQ ID NO: 2.”

The rejection is respectfully traversed.

Applicants note that claims 57-59 have been canceled and this is believed to obviate the rejection. However, to the extent that the rejection is applied to the currently presented claims, Applicants wish to make the following remarks. At page 2 of the Office Action, the Examiner

states that Kunsch et al. (U.S. Patent No. 6,593,114) "claims priority through US application 08/781,986, filed 1/3/97, to US provisional application filed 1/5/96." However, the filing date of the parent provisional application (e.g., U.S.S.N. 60/009,861) may only be used as the 35 U.S.C. §102(e) date if the parent application properly supports the subject matter used to make the rejection under 35 U.S.C. §102(e) (see MPEP § 706.02(f)(1)). Applicants have examined U.S.S.N. 60/009,861 and were unable to find any subject matter that Applicants believe properly supports the current rejection. If the Examiner wishes to maintain this rejection, Applicants request that the Examiner point out with specificity the subject matter in U.S.S.N. 60/009,861 which supports the current rejection, including, for example, SEQ ID NO: 772 from U.S. Patent No. 6,593,114. In the absence of such a showing, Applicants assert that U.S. Patent No. 6,593,114 is not a proper reference under 35 U.S.C. § 102(e) because the earliest priority date for that patent which supports the subject matter used to make this rejection will fall after Applicants' earliest filing date (August 28, 1996). Accordingly, reconsideration and withdrawal of the rejection is respectfully requested absent a showing by the Examiner to the contrary.

Double Patenting

Claims 49-60 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,432,670. Applicants note that claims 49-60 have been canceled and this is believed to obviate the rejection. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Conclusion

In view of the above remarks and the amendments to the claims, it is believed that this application is in condition for allowance. If a telephone conversation with Applicant's Attorney would expedite prosecution of the above-identified application, the Examiner is urged to call the undersigned at (617) 832-1000.

Respectfully submitted,

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